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Computer Reservations System Regulations
14 CFR Part 255

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COMMENTS OF NORTHWEST AIRLINES, INC.

Northwest Airlines, Inc. ("Northwest") hereby submits the following Comments to the Department's Advance Notice of Proposed Rulemaking ("ANPRM"), published in the Federal Register on September 10, 1997, 62 Fed. Reg. 47,606, inviting comments regarding whether the Department's current rules governing airline computer reservations systems ("CRSs") should be extended and whether any modifications are necessary.¹ Northwest supports the Department's extension of its existing rules governing airline CRSs, with certain modifications as outlined herein.

- I. The Department's CRS rules should be extended for an additional three years but a provision should be added requiring final action within 90 days of receipt of any petition for rulemaking or request for enforcement action.

The Department's CRS rules have served the public interest by promoting competition among airlines and among CRSs, and enabling travel agents and consumers to receive accurate and complete airline information. Northwest therefore supports extension of the effective date of the Department's CRS rules.

¹ The Department's existing CRS rules, set forth in 14 CFR Part 255, will expire on December 31, 1997 unless extended by the Department.

13PP

As for the length of such extension, Northwest recommends that the existing regulations be extended for an additional three years. It is important that the extension period is short enough to enable the Department's CRS rules to keep pace with changes in technology and demand in the airline information distribution market. On the other hand, the rules should be effective for a period long enough to ensure stability and to generate sufficient evidence of whether they continue to be effective and necessary. Northwest believes that a three year extension of the Department's CRS rules properly balances these two objectives.

Northwest further proposes that a provision be added to the existing rules requiring final action by the Department within 90 days of receiving a petition for rulemaking or a request for enforcement action related to the rules. Due to the dynamic nature of the airline and CRS industries and the rapid development of new technology and distribution channels, it is essential that requests for modification and/or enforcement of the existing rules be addressed promptly. As the Department notes in the ANPRM, there are numerous CRS rulemaking requests currently pending before the Department, many of which have been pending for over twelve months. In the event the Department ultimately finds merit in one or more of these rulemaking petitions, the delay in action upon such meritorious requests may have unnecessarily prolonged injuries to competition, consumers and industry members. A provision requiring action within 90 days will facilitate prompt identification and resolution of any pressing requests for modifications to the rules or enforcement action which are made prior to the next formal review.

- II. The Department's CRS rules should be modified to replace bookings with ticketed segments as a measurement of performance in CRS-travel agent agreements and to prohibit the use of monetary incentives in such agreements.

It has become a widespread practice for CRSs to structure travel agent subscriber agreements based on the number of bookings per terminal/office generated by a travel agent through a particular CRS. Conceptually, volume-based incentives make sense. However, when structured on the basis of bookings and not on the basis of ticketed segments, such contractual provisions create an incentive for travel agents to generate passive bookings which they do not necessarily intend to ticket in order to maximize the benefits to be received under their CRS productivity agreements. As a result, there has been a proliferation of passive bookings as productivity contracts have proliferated.

Northwest understands that currently 50 percent of all passive bookings are never ticketed. It is the airlines, not travel agents, which are paying for this widespread practice through the booking fees airlines pay to CRSs. At some point, the mounting CRS costs caused by passive bookings must be passed along to consumers in one form or another. There currently is little deterrent for such abuse since the cost of monitoring passive bookings and the risk of impacting travel agency relationships often outweighs the benefits to be derived from such policing activities. The Department must put a stop to this widespread practice by amending its existing CRS rules to prohibit utilization of bookings as a measurement of productivity in CRS-travel agent agreements. Northwest would have no objection to the continuation of CRS-travel agent productivity agreements where such agreements measure productivity by actual ticketed segments.

The Department should further amend its CRS rules to preclude CRSs from providing travel agents with per segment “rebates” as booking incentives. The practice of awarding travel agents monetary awards for bookings via a given CRS (whether based on bookings or tickets) indirectly leads to higher fees, which are passed on to airlines, and increases the risk of passive bookings. At worst, this practice can serve as a vehicle for CRSs and some airline owners to circumvent the Department's general ban on override tie-ins between airlines, CRSs and subscribers. If the intent of productivity agreements is in fact to provide discounts towards automation services, then such discounts should be limited to a full waiver of automation fees.

III. The Department's CRS rules should be modified to prohibit CRSs from charging airlines for bookings made by agents who lack ticketing authority.

It is the current practice of CRSs to require airlines to pay booking fees for bookings generated by travel agents regardless of whether such agents are appointed by ARC and/or IATA to issue tickets. This practice unjustifiably raises distribution costs and promotes inefficiencies which must be absorbed by the participating airlines. In most instances, when a non-ARC or IATA travel agent enters a booking into a CRS, a second “approved agency” must enter a new booking in order to generate the ticket. This is the case because CRSs have not been required to make a mechanism available to enable access to a previously made booking for purposes of ticketing only. Both agencies want credit for the productivity - hence this situation illustrates another key reason for requiring that subscriber agreements measure each travel agent's productivity based on “ticketed segments.” As a result of current practices, airlines are forced to pay double booking fees each time a non-ARC or IATA authorized travel agent enters a booking

into a CRS. As is the case with passive bookings, at some point airlines must pass along to consumers the added (and unjustified) CRS costs resulting from these double booking fees.

The Department should remedy this situation by adding a provision to its existing rules prohibiting CRSs from charging airlines for bookings generated by travel agents unauthorized to issue tickets. In addition, the Department should require that non-ARC and non-IATA approved travel agents be given unique identification numbers. Such tracking numbers will allow airlines to more effectively track bookings by non-ARC/IATA agencies.²

IV. Northwest does not oppose an extension to the Department's mandatory participation rule, with modifications in several respects.

Under the Department's existing mandatory participation rule -- 14 C.F.R. Section 255.7(a) -- system owners are required to participate at the same level and in the same enhancements in other CRSs as they participate in their owned systems so long as such participation is available on commercially-reasonable terms. When the Department first adopted the mandatory participation rule, it found that the rule was important to promote competition among CRSs and to ensure that adequate information is available to enable consumers to make educated decisions in choosing airlines and fares. The Department's mandatory participation rule generally has been effective in accomplishing some of these objectives. However, there are a few modifications which should be made to the existing mandatory participation rule to further

² Currently, airlines can only track bookings by non-ARC/IATA approved agencies through an office pseudo city code which is not consistently provided by CRSs.

promote the Department's dual objectives of enhancing competition and enabling public access to complete and accurate airline information.

- A. If the mandatory participation rule is continued, carriers should be required to participate only in the "basic level" of any CRS.

The Department's existing mandatory participation rule is overbroad in its requirement that system owners participate at the same level and in the same enhancements in other CRSs as they participate in their owned systems. Requiring system owners to participate in all CRSs at an equal level unnecessarily raises distribution costs, promotes inefficiencies, and lessens the incentive for CRSs to compete through service enhancements and price in order to attract participating carriers which are CRS owners to enhanced functionality. This result is directly contrary to the original purpose of the mandatory participation rule.

The Department should modify its existing rule to require CRS owners (and marketers)³ to participate only at the basic level of non-owned CRSs. "Basic level" should be defined as that level which includes only: flight schedules with flight availability display, fares and fare rules, booking services, seat assignments and ticketing capability.

Requiring CRS owners and marketers to participate only at the basic level of other CRSs will encourage CRSs to compete for the business of system owners and marketers with respect to higher levels of service and enhancements. This increase in CRS competition will encourage CRSs to improve their products to make them more attractive to the existing "captive" airlines. Moreover, CRSs will be forced to compete on price and functionality (which translates to value)

³ With respect to extension of the mandatory participation rule to CRS marketers, see Section IV.B. below.

in order to gain the business of system owners, particularly if they believe participation is important for their CRS to be competitive.⁴

- B. Similar to parity clauses, the Department's mandatory participation rule, if extended, should cover airlines that market a particular CRS.

The Department's existing mandatory participation rule only covers "system owners". 14 C.F.R. § 255.7(a). The purpose of the rule is to ensure that airlines base their decisions regarding participation in CRSs on the intrinsic value of the CRS service to their airline operations. In adopting the rule, the Department found that airlines with an ownership interest in a particular CRS may have incentive to base their decisions regarding participation in non-owned systems at least in part on the impact of such participation on their CRS ownership interests. The Department concluded that such self-interested decision making by airline system owners may lessen competition among CRSs and negatively impact the amount and/or accuracy of information available to consumers. The Department's mandatory participation rule was adopted in an attempt to remove this self-interested motivation from a system owner's calculus in deciding in which CRS services to participate.

The Department's existing mandatory participation rule is under inclusive, however, because it does not extend to airlines which market a CRS. The rationale behind the Department's existing rule applies equally to airlines involved in CRS marketing relationships. Like a system owner, an airline involved in a marketing relationship with a particular CRS has an

⁴ Adopting this proposal would also require a conforming modification to the new parity clause rule, 14 C.F.R. § 255.6(e).

incentive to base decisions regarding subscription to higher participation levels (and enhancements) in other CRSs at least in part on the impact of its decision on the benefits to be derived from its CRS marketing relationship.

In its recent rulemaking proceeding regarding CRS enforcement of parity clauses,⁵ the Department considered the very issue of the similarity between system owners and system marketers. 62 Fed. Reg. 59784 (Nov. 5, 1997). The Department ultimately concluded that system owners and system marketers should be treated alike for purposes of parity clause enforcement. The Department's final rule on parity clauses generally prohibits enforcement of such clauses by CRSs against airlines, with the exception of airlines that "own or market a CRS". Id. at 59802.

The Department's new rule governing parity clauses is directed toward the same outcome as the Department's mandatory participation rule. Both rules require certain airlines to participate equally in owned and non-owned systems. The only difference is that the parity clause rule now treats system owners and system marketers equally, while the mandatory participation rule applies only to system owners. There is no logical reason for such a distinction. Whether an airline holds an ownership interest in a CRS or stands to derive a benefit as a result of a CRS marketing relationship, there is an incentive to factor into decisions regarding participation in other CRSs the impact of such a decision on the airline's CRS alliance. If it decides to extend the mandatory participation rule, the Department should address the

⁵ A "parity clause" is a clause in a contract between a CRS and an airline which bars the airline from choosing a level of participation in that CRS lower than the airline's level of participation in any other system.

discrepancy between the mandatory participation rule and its new parity rule by amending the mandatory participation rule to apply to airlines that "own or market a system".

- V. The Department's CRS rules require certain modifications to respond to developments of new airline information distribution channels and changes in the demand for such information.

There has been a dynamic emergence of new technologies and new airline information distribution channels, and resulting changes in demand for such information, since the Department last renewed its CRS rules in 1992. Airlines and CRSs are implementing new and innovative distribution mechanisms, such as electronic ticketing and direct access by consumers through the Internet. CRSs are developing expanding new and innovative products that technically are not CRS "service enhancements" as that term is defined in the CRS rules. The Department's CRS rules require certain modifications to respond to these developments.

- A. Airlines should not be required or locked into participation in non-travel agent CRS access points.

It is becoming increasingly common for corporations and consumers to access airline information directly from their home or business PC. For example, consumers can access Sabre directly via the Internet through Sabre's Travelocity service, among others. The Department should confirm that its CRS rules are intended to apply only to systems used by travel agencies. Airlines should not be required to participate (and be bound by existing CRS contract booking fee pricing) in corporate products or consumer locations of CRSs. Fees for and participation in these services should be negotiable outside of the standard framework for subscriber agreements covering travel agencies.

The Department adopted its CRS rules originally to address concerns relating to the widespread consumer perception that travel agents are neutral providers of travel information. The Department concluded that so long as that perception persists, the public interest demands that CRSs be required to maintain unbiased systems. The Department, however, never intended its CRS rules to extend to systems utilized outside the travel agency industry. Indeed, the Department addressed this issue directly in 1992:

We also will not apply the [CRS] rules to systems used by persons other than travel agencies. First, systems used by corporate travel department's should not require regulation, because corporations operating their own travel offices can choose which system they will use and control their employees' airline bookings.... Similarly, other carriers should be able to compete with a vendor for a corporate travel department's business and thereby make the application of the rules unnecessary. 57 Fed. Reg. at 43794-5.

This same rationale applies with respect to systems used by consumers directly. Consumers can choose which system they will use to access airline information directly, and system vendors and other companies should be able to compete for the business of consumers desiring direct access.

There is no need to expand the Department's CRS rules outside the travel agent distribution system. Unlike consumers relying on travel agents, corporate and consumer subscribers of airline information can choose between neutral and single-supplier sponsored services depending upon their corporate/individual preferences. Limiting the applicability of the CRS rules to the travel agent distribution system will promote competition among system vendors for corporate and consumer business without running a risk of the type of consumer deception associated with the travel agent distribution system. As a result, corporate and consumer subscribers should have better products and information available to them and at lower

prices. The Department therefore should confirm that its CRS rules are applicable only to systems accessed by travel agents.

Although Northwest believes the Department's CRS rules generally should not apply to on-line booking channels, Northwest recommends that the Department modify its rules to require on-line booking channels to obtain a unique identifier number from ARC/IATA that allows the airline to identify on-line bookings and differentiate between traditional agency bookings and on-line bookings. This requirement will facilitate data collection with respect to the volume of on-line bookings and analysis of the impact of developments in this area.

- B. All distribution channels held out as neutral should be required to comply with the non-bias requirements contained in the existing CRS rules.

While Northwest opposes broad expansion of the Department's regulations beyond the travel agency distribution system, the Department should modify its existing CRS rules to make them explicitly applicable to all distribution channels held out as neutral. To the extent a distribution system may be viewed by consumers as neutral, the potential for consumer deception is reintroduced. Just as the Department found with respect to biasing of CRSs utilized by travel agents perceived to be neutral, permitting non-airline affiliated systems to contain bias despite an appearance of neutrality has the potential to cause consumer deception and a lessening of competition among airlines and among CRSs. The Department should address this danger and amend its CRS rules to require any distribution system held out to the public as neutral to comply with the Department's CRS rules with respect to non-bias in schedule and fare displays and fees.

- C. CRSs should be required to make all marketing, booking and sales data available on a daily basis.

Northwest supports extension of Section 255.10 of the Department's CRS rules requiring CRSs to make available on nondiscriminatory terms marketing, booking and sales data.

Northwest also supports extension of the reciprocity pre-condition with respect to release of such data to foreign carriers. Northwest, however, does recommend one modification to the existing rules to address a potential imbalance in the quality of data between CRSs. The rule should mandate that all CRSs make marketing, booking and sales data available on a daily basis, the common standard for most CRSs. Requiring uniformity in the quality and timeliness of data provided by CRSs will ensure that all airlines which purchase this data are on a level playing field.

- D. Airline sales personnel should be prohibited from selling or marketing a system.

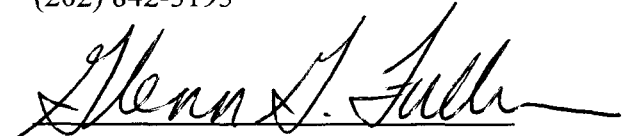
The Department should adopt a rule which prohibits airline sales personnel from selling or marketing a system. Such a rule should provide that a CRS owner or marketer shall not use its sales force responsible for marketing its air services to directly sell any system or system vendor

products to subscribers. The Department has taken steps to guard against CRS/airline incentive tie-ins, and adding this provision will provide additional safeguards in this important area.

Respectfully submitted,



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